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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,383	03/11/2005	Stephen D. Newman	40302-0033	5729
37526 7590 04/29/2009 RADER, FISHMAN & GRAUER PLLC 10653 SOUTH RIVER FRONT PARKWAY SUITE 150 SOUTH JORDAN, UT 84095				
EXAMINER REYNOLDS, STEVEN ALAN				
ART UNIT 3728		PAPER NUMBER		
MAIL DATE 04/29/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,383

Applicant(s)

NEWMAN ET AL.

Examiner

Steven Reynolds

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-83 and 85-99 is/are pending in the application.
- 4a) Of the above claim(s) 1-69, 71, 73, 74, 87 and 89-98 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70, 72, 75, 76, 78-83, 86 and 88 is/are rejected.
- 7) ☒ Claim(s) 77, 85 and 99 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the reply filed on 4/21/2009, wherein claims 70, 75 and 85 were amended; claim 85 was cancelled; and claim 99 was canceled. Claims 1-69, 71, 73, 74, 87 and 89-98 remain withdrawn from consideration.

Election/Restrictions

2. This application contains claims 1-69, 71, 73, 74, 87 and 89-98 are drawn to an invention nonelected with traverse in the reply filed on 7/2/2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 70, 72, 75, 76, 79, 81-83 and 88 are rejected under 35 U.S.C. 102(b) as being anticipated by Ryder et al. (Us 4,863,698). Ryder discloses a reusable holder for contact lens cases comprising: a base (14); one or more receptacles (20) formed in said base configured to receive a contact lens case; and a time keeping device; wherein the time keeping device comprises an indicator (50) for each one or more receptacles that

indicates a period of time that has elapsed since the contact lens case currently in the receptacle was placed therein to denote a need to discard said contact lens case and a contact lens associated with said contact lens case (if desirable at that time); wherein said one or more receptacles configured to receive a contact lens case includes: a contact lens case engagement surface (28) formed on said one or more receptacles configured to lock (by friction) said contact lens case in said one or more receptacles; and an actuator formed in said base, wherein said actuator is configured to be triggered and reset said time keeping device when a contact lens case is received in said one or more receptacles (the timer is reset once the contact lens cases are placed in the receptacles and the lid is closed).

Regarding claims 72, 75 and 76, Ryder discloses at least one contact lens case (22); wherein the contact lens case comprises a bottom member (24) having a well with a generally concave shape; the at least one contact lens case snaps into the receptacles via engagement of said at least one contact lens case with said contact lens engagement surface (held by gravity and friction fit); and the contact lens case has a top and a bottom.

Regarding claims 79, 81-83 and 88, Ryder discloses the indicator shows the period of time that has elapsed by a number; the indicator shows the period of time that has elapsed changing from a first color to a second color (light 52), wherein said second color denotes a need to discard said contact lens case and a contact lens associated with said contact lens case; the contact lens case is replaced after the period of time

has elapsed (if desired); the holder is a plastic; and the holder has receptacles in the base.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 80 and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryder et al. (US 4,863,698). As described above, Ryder discloses the claimed invention except for the specifics of the indicator and the battery. Regarding the indicator, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an indicator displaying days in order to indicate to the user which day the device should be used.

Regarding the battery, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Ryder powered by a battery in order to allow the device to be portable.

7. Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ryder et al. (US 4,863,698) in view of Artis (US 5,699,900). As described above, Ryder discloses the claimed invention except is silent about the specifics of the display. However, Artis teaches a contact lens holder comprising a time keeping device (44) with a LCD display (See column 3, lines 34-35) for the purpose of displaying a count value. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was

made to have modified the display of Ryder to be an LCD display as taught by Artis in order to provide a clear display.

Allowable Subject Matter

8. Claims 77, 85 and 99 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. R./
Examiner, Art Unit 3728

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728